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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/773,764	02/06/2004	Merlin E. Thomsen	FSP0042	5578				
29586 FSP LLC P.O. BOX 890 VANCOUVER, WA 98666	7590 10/02/2007		<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">THANH, QUANG D</td></tr></table>		EXAMINER		THANH, QUANG D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/773,764

Applicant(s)

THOMSEN, MERLIN E.

Examiner

Quang D. Thanh

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 is/are allowed.
- 6) ☒ Claim(s) 13-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/6/07 has been entered.
2. This office action is responsive to the amendment filed on 9/3/07. As directed by the amendment: claim 13 has been amended, no claims has been cancelled nor added. Thus, claims 1-18 are presently pending in this application.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Re claims 14 and 17, the limitation "**further comprising: the control system**" is unclear as to whether this control system is another different control system or is the same control system that was recited in claims 13 and 16; and the limitation "to apply **motion**" is unclear as to what type of motion ?

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 13-14, 16-17, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Licht et al. (6,428,466).

8. Re claims 13-14, Licht et al. discloses an apparatus comprising a fluid-tight barrier 61, an open table (best seen in fig. 2) over which the fluid-tight barrier is mounted at a position to make contact with a person lying on the open table, jets 32 enclosed within the barrier, and a control system 60 to cause the jets to apply fluid under pressure to an interior surface of the barrier as the barrier is translated along the table (col. 3, lines 24-27); to apply motion (along the pulsating movement of the fluid against the barrier, col. 3, lines 24-27) in addition to translation motion to the movable barrier as the movable barrier is translated over the table.

9. Re claims 16-17, Licht et al. discloses an apparatus comprising: an open cushioned table (bed 17 including pad 19) unenclosed by a lid (best seen in fig. 2); a water-tight barrier 61 movably mounted over the open cushioned table; and a control system 60 to cause application of fluid under pressure to an interior surface of the barrier as the barrier is translated along and over the table (col. 3, lines 24-27); to apply motion (along the pulsating movement of the fluid against the barrier, col. 3, lines 24-27)

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in addition to translation motion to the movable barrier as the movable barrier is translated over the table.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Licht et al. in view of Mutzell. Licht et al. discloses an apparatus having all the features except that it does not disclose a translation guide system mounted below a surface of the table. However, Mutzell teaches a similar apparatus having a translation guide system 61 that is mounted below the table (fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Licht et al., to include a translation guide system mounted below the table, as suggested and taught by Mutzell, for the purpose of providing means for translating the barrier along the table inside the bottom cabinet.

Allowable Subject Matter

12. Claims 1-12 are allowed.

Response to Arguments

13. Applicant's arguments filed 9/6/07 have been fully considered but they are not persuasive.

14. In response to applicant's argument that "Licht does not teach an open table" and "A capsule with the lid up is still not an open table", applicant's attention is directed to col. 5, lines 49-55 in the Licht reference, which clearly teaches that "a spa capsule partially enclosing a person's body" and "said lid open at said head end" (best seen in fig. 2). Accordingly, the lid is open at least a portion of the person body and thus appears to comprehend the claimed language "open table". Moreover, applicant's attention is directed to col. 2, lines 59-60 in the Licht reference and fig. 2, which clearly teaches that "Fig. 2 shows a perspective with exterior portions and the lid remove" of an open table and thus appears to comprehend the claimed language "open table".

15. In response to applicant's argument that there is no motivation to combine Licht with Mutzell, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Licht's translation guide system mounted above the table and not below the table. Mutzell is cited to teach a water jet massage apparatus having a translation guide system 61 that is mounted below the table (fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Licht et al., to include a translation guide system mounted below the table, as suggested and taught by Mutzell, for the purpose of providing means for translating the barrier along the table

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inside the bottom cabinet. Thus, all the elements of the translation guide system are now being stored in the bottom cabinet allowing the user to freely get on or off the table.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang D. Thanh/

Quang D. Thanh, Primary Examiner
Art Unit 3771, (571) 272-4982